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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5689

DATE COMPLAINT FILED: 11/23/05

DATE OF NOTIFICATION: 11/30/05

LAST RESPONSE RECEIVED: 01/13/06

DATE ACTIVATED: 01/30/06

STATUTE OF LIMITATIONS: 01/01/05 –
 03/25/10

COMPLAINANT:

Jimmy Thompson

RESPONDENTS:

International Brotherhood of Electrical Workers
 Local Union 429

International Brotherhood of Electrical Workers
 Local Union 429 C.O.P.E. Fund

RELEVANT STATUTES:

2 U.S.C. § 432(b)(2)

2 U.S.C. § 433

2 U.S.C. § 434

11 C.F.R. § 102.6(c)(4)

11 C.F.R. § 102.8(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Department of Labor

I. INTRODUCTION

This matter was generated by a complaint filed by Jimmy Thompson of Gainesboro, Tennessee, concerning a labor union to which he belongs.¹ Mr. Thompson complains that the International Brotherhood of Electrical Workers, Local Union 429 ("Local 429") has failed to

¹ According to Local 429's website, Mr. Thompson is listed as one of its 13 officers. See www.ibew429.org/officers.htm.

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1 register as a political committee and file disclosure reports, that it has no treasurer or records, and
2 that its "solicitation methods are clearly not in the guidelines of the Commission's jurisdiction."
3 He claims that Department of Labor disclosure reports show that since 2000, Local 429 has
4 stated that it has no separate segregated fund but has nevertheless collected contributions for the
5 IBEW Local Union 429 COPE Fund ("Local 429 Fund") and made contributions to the IBEW
6 COPE, an FEC-registered political committee. The complainant attached copies of his payroll
7 deduction cards showing his own contribution authorizations from 2002 through 2005 and
8 attached a chart showing the transfer of contributions from Local 429 to IBEW COPE.

9 As described more fully below, this Office recommends that the Commission find no
10 reason to believe that International Brotherhood of Electrical Workers Local Union 429 or the
11 IBEW Local Union 429 COPE Fund violated 2 U.S.C. §§ 433 and 434 by failing to register and
12 report as a political committee. Nevertheless, this Office recommends that the Commission find
13 reason to believe that IBEW Local Union 429 and IBEW Local Union 429 COPE Fund violated
14 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. §§ 102.8(b) and 102.6(c)(4) by failing to timely forward
15 to IBEW COPE contributions it received as a collecting agent but take no further action other
16 than send an admonishment letter. This Office does not make any recommendation regarding the
17 complainant's allegation that Local 429's solicitation methods are "not within the guidelines of
18 the Commission's jurisdiction" because the allegation lacks specificity; the complainant did not
19 explain how he was solicited for contributions to the separate segregated fund, including whether
20 the PDA was the only solicitation he received. *See* Statement of Reasons MUR 4960 (*In re*
21 Hillary Rodham Clinton for Senate Exploratory Committee) ("The Commission may find 'reason
22 to believe' only if a complaint sets forth sufficient specific facts, which if proven true, would
23 constitute a violation of the FECA.").

II. FACTUAL AND LEGAL ANALYSIS

Local 429, located in Nashville, Tennessee, is the local unit of the International Brotherhood of Electrical Workers. Its approximately 1,500 members come from 38 counties in middle Tennessee and southern Kentucky. Local 429 runs a jobs board where it connects members with jobs, most of which are temporary. It appears that members fill out and sign various authorization cards prior to beginning new jobs. The cards include an "ASSIGNMENT OF WAGES FOR PAYMENT OF WORKING DUES," "AUTHORIZATION FOR REPRESENTATION," and "I.B.E.W. LOCAL 429 VOLUNTARY C.O.P.E. CHECK-OFF AUTHORIZATION" ("COPE card").

It appears that since at least August 2, 2002, through March 25, 2005, the COPE card has read in relevant part:

I hereby authorize you to deduct from my wages the sum of \$0.10 per hour for all compensated hours, and forward that amount to IBEW Local 429 C.O.P.E. Fund, via NECA Board #54 Trust Fund, 1909 12th Avenue, Nashville, Tennessee 37203.

1. Local 429 and Local 429 Fund do not appear to have violated the Act by failing to register and report as a political committee

The gravamen of the complaint is that Local 429 failed to register and report as a political committee, and that, as a political committee, Local 429 failed to name a treasurer and maintain records.² The basis for this allegation appears to be that while Local 429's Department of Labor disclosure reports state that it does not have a separate segregated fund ("SSF"), the same filings show that it received and disbursed political contributions. In addition, payroll deduction

² The Act defines a "political committee" as any committee, club, association, or other group of persons that receives more than \$1,000 in "contributions" or makes more than \$1,000 in "expenditures" in a calendar year for the purpose of influencing a federal election. See 2 U.S.C. § 431(4)(A).

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1 authorization cards signed by the complainant show that he made contributions to the "Local 429
2 C.O.P.E Fund."

3 Local 429 maintains that it is not a political committee and does not sponsor a SSF. It
4 states that it is a collecting agent for the SSF connected to its parent union, the IBEW COPE
5 Fund, which is a registered political committee. Local 429 acknowledged that the inaccurate
6 name of the SSF on the complainant's payroll deduction authorization cards, "Local 429
7 C.O.P.E," likely confused him. Indeed, there is no FEC-registered political committee called the
8 Local 429 COPE or Local 429 COPE Fund. The Department of Labor Form LM-2, required to
9 be filed annually by labor organizations with more than \$200,000 in annual receipts or those in
10 trusteeship, shows that Local 429 received "COPE receipts" or "COPE International PAC"
11 receipts and made "political contributions" or "COPE International PAC" contributions in the
12 years referred to in the complaint.

13 A "collecting agent" is an organization or committee that collects and transmits
14 contributions to one or more separate segregated funds to which the collecting agent is related.
15 See 11 C.F.R. § 102.6(b)(1). A parent, subsidiary, branch, division, department, or local unit of
16 the connected organization or the separate segregated fund may act as collecting agent for the
17 separate segregated fund. See 11 C.F.R. § 102.6(b)(1)(iii). As a local unit of the IBEW, Local
18 429 appears to be an entity that may act as a collecting agent for IBEW COPE. See *id.*

19 The Commission's regulations require collecting agents to follow certain procedures for
20 collecting and transmitting contributions for the SSF in order not to have their own reporting
21 requirements. For purposes of making transmittals of contributions received in forms other than
22 checks made payable to the separate segregated fund, the collecting agent must either: 1) set up a
23 transmittal account to be used solely for the deposit and transmittal of funds collected on behalf
24 of the separate segregated fund; 2) deposit such contributions into the agent's treasury account,

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1 keeping separate records; or 3) deposit them into an account used only for state and local election
2 activity. *See* 11 C.F.R. § 102.6(c)(4)(ii). A collecting agent that follows these procedures is not
3 required to register and report as a political committee provided that the organization does not
4 engage in activities such as making contributions or expenditures for the purpose of influencing
5 federal elections. *See* 11 C.F.R. § 102.6(b)(2).

6 According to Local 429, it "solicits and collects voluntary political contributions from its
7 membership and transmits all of these funds to IBEW COPE." Local 429 states that when an
8 employer deducts union dues and political contributions from a union member's pay, the funds
9 are transmitted to a clearing account. The political contributions are then transferred to a
10 transmittal account called the IBEW Local 429 COPE Fund, which then transfers the funds to the
11 IBEW COPE political committee.

12 Local 429's system of using a payroll deduction plan and transmittal account appears to
13 be within the procedures allowed by the Commission's regulations for collecting agents that
14 transmit funds to the SSF. Because Local 429 appears to be a permissible collecting agent under
15 11 C.F.R. § 102.6(b), and because there is no information to suggest that the Local 429 COPE
16 Fund is used for any other purpose, this Office recommends that the Commission find no reason
17 to believe that IBEW Local Union 429 or the IBEW Local Union 429 COPE Fund violated
18 2 U.S.C. §§ 433 and 444 by failing to register and report with the Commission as a political
19 committee.

20 **2. Local 429 and Local 429 Fund may have violated the Act by failing to**
21 **timely transfer contributions to the SSF**

22 Pursuant to 2 U.S.C. § 432(b)(2)(A) and 11 C.F.R. § 102.8(b)(1), every person who
23 receives a contribution of \$50 or less for a political committee that is not an authorized
24 committee of a candidate shall forward such contribution to the treasurer of the committee within
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30 days of receipt. In addition, every person who receives a contribution in excess of \$50 for a political committee that is not an authorized committee of a candidate must forward the contribution to the treasurer within 10 days of receipt, along with the name and address of the contributor and the date of receipt of the contribution. *See* 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. § 102.8(b)(2). These transmittal obligations apply specifically to collecting agents. *See* 11 C.F.R. § 102.6(c)(4).

The complainant attached a chart showing that Local 429 may not have timely transferred contributions it collected from 2000 through 2004 to IBEW COPE. According to the chart attached to the complaint, which we verified by reviewing Department of Labor disclosure reports, Local 429 collected from its members the following amounts and made the following transfers to IBEW COPE:

<u>YEAR</u>	<u>CONTRIBUTIONS COLLECTED BY LOCAL 429</u>	<u>CONTRIBUTIONS TRANSFERRED</u>
2000	\$68,874	\$0
2001	\$0	\$58,000
2002	\$50,201	\$88,900
2003	\$69,179	\$70,000
2004	\$39,546	\$45,000

As seen in the chart above, there was a great disparity between the contributions received by Local 429 and the transfers made to the IBEW COPE Fund from 2000 through 2002. It is possible that, in any given year, some collections take place at the end of the year, with appropriate transfers made at the beginning of the following year; however, we would expect the total numbers for collections and transfers to be about the same or close to it, as appears to be the case in 2003 and 2004. The numbers in 2000, 2001, and 2002 suggest that Local 429 did not timely transfer contributions pursuant to the Commission's regulations.

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Therefore, this Office recommends finding reason to believe that IBEW Local Union 429 and IBEW Local Union 429 COPE Fund violated 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. §§ 102.8(b) and 102.6(c)(4) by failing to timely transfer contributions. At the same time, we recommend that the Commission take no action other than sending an admonishment letter. The violations in 2000 and 2001 would be time-barred by the statute of limitations before the Commission could file suit in court. In addition, as can be seen in the chart, Local 429 has shown significant improvement in the dollar differences between receipts and disbursements in 2003 and 2004, suggesting that it improved its compliance with the 10 and 30-day thresholds.

IV. RECOMMENDATIONS


1. Find no reason to believe that IBEW Local Union 429 or IBEW Local Union 429 COPE Fund violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee.
2. Find reason to believe that the IBEW Local Union 429 and IBEW Local Union 429 COPE Fund violated 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. §§ 102.6(c)(4) and 102.8(b) by failing to timely transmit contributions but take no further action other than admonishment.
3. Approve the appropriate letters.
4. Close the file.


Lawrence H. Norton
General Counsel

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Deputy Associate General Counsel
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4/28/06
Date

BY:


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